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Difficulties encountered in dealing with special tax units ('Organschaften') in the German Business Register and possible solutions to those difficulties	

1. Definition and delimitation of 'Organschaften'

The German tax law knows the so-called 'Organschaft' as a special tax unit constituting a legal institution under German taxation law. Stated simply, it serves to organise the taxation of turnover, profit and trade income such that taxpayers which are economically connected to one another do not suffer a disadvantage from not also being linked under (civil) law, but existing separately from one another as independent legal units. 'Organschaften' have been an element of German taxation law since back in the nineteen-thirties.

Separate provisions, which also relate to the definition criteria, apply to 'Organschaften' for corporate tax, value added tax (VAT) and trade tax. However, 'Organschaften' can, but do not necessarily need to, exist equally for all three types of tax.

'Organschaften' subject to VAT are of particular significance in keeping the German Statistical Business Register since all units subject to VAT are periodically entered in the German Business Register.¹ Only these are examined below.

As far as we are aware, however, 'Organschaften' subject to VAT do not exist only in Germany, but also in other Member States of the EU. The 6th EC Directive on VAT (Art 4 para. 4 (2)) allows the Member States to permit persons (natural and legal persons engaging in economic activity), domiciled on domestic territory, if they are legally independent but closely linked by virtue of mutual financial, economic and organisational connections to be considered as one single taxpayer.² The German provision is in line with this EU stipulation.

An 'Organschaft' is therefore a combination of several legal units. It consists of the parent company (called the 'Organträger') and the controlled subsidiary companies (one or several, the 'Organgesellschaften'). The parent company acts as the taxpayer for the purposes of the tax administration.

An 'Organschaft' is established on the basis of the financial, economic and organisational integration of the controlled subsidiary companies. There is no need here for these three criteria to be met to the same degree; the decisive element is the overall combination of the actual circumstances, which therefore leaves a certain scope for discretion to the tax administration and the taxpayers. The three criteria can be described as follows:

Financial integration: This requires the parent company to have a decisive capital holding in order to impose its will with regard to the controlled subsidiary companies (majority of voting rights).

Economic integration: This exists if the parent company and the controlled subsidiary companies form an economic unit by promoting or supplementing their activities.

Organisational integration: This exists if organisational measures are employed to ensure that the will of the dominant unit is indeed imposed on the controlled subsidiary companies. This means that either the managing director of the controlled subsidiary company is a staff member of the dominant unit or a domination contract has been concluded.

The original motive for taxpayers to form 'Organschaften' was to avoid double or multiple turnover tax. This is no longer necessary since the introduction of the deduction of advance tax in Germany in 1967, since the deduction of advance tax avoids this very double taxation of intermediate input by a taxpayer

¹ The German tax authorities transmit all units that are subject to VAT and are of a certain size - namely an annual turnover of at least DM 32,500 (roughly Euro 16,620) and VAT in the previous year of at least DM 1,000 (roughly Euro 510) to the Statistical Offices (Federal Statistical Office and Statistical Offices of the Länder).

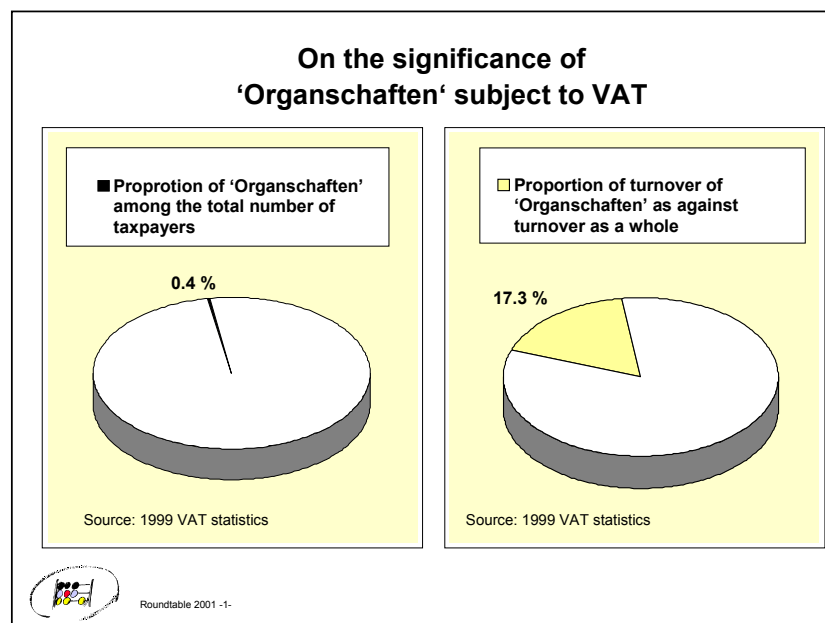
² Sixth Council Directive of 17 May 1977, in OJ L 145/1 of 13.6.1977

being able to deduct the VAT paid for intermediate input from that incurred in selling their own performance. This motive now only exists with specific units not entitled to this deduction of advance tax (e.g. insurance companies or housing rental enterprises). The actual motive today lies solely in simplifying the administration procedure, and this motive exists on both sides: for taxpayers and for the tax administration. This does not apply to the other types of 'Organschaften' (corporate tax and trade tax); here the motive indeed continues to be that of avoiding taxes.

The preconditions for the formation of an 'Organschaft' (financial, economic and organisational integration) are virtually the same as the criteria to form a group of companies. There are however a few particularities in taxation law, under which an 'Organschaft' is more specific than a group. Thus, controlled subsidiary companies may only be legal persons and not, for instance, partnerships or sole proprietorships. By contrast, groups may well include partnerships. The parent company (at the head of the 'Organschaft') however does not need to be a legal person. Furthermore, the formation of 'Organschaften' is limited to domestic legal units. If a parent company has its management abroad, the economically most significant part of the 'Organschaft' on domestic territory is therefore deemed to be the parent company.

2. Frequency and extent of 'Organschaften' in Germany

Information regarding the frequency and extent of 'Organschaften' in Germany can be obtained from the VAT statistics. 11,714 'Organschaften' were shown in these statistics for the year under report 1999. With a total number of roughly 2.9 million taxpayers subject to VAT, the proportion of 'Organschaften' among the number of taxpayers totals 0.4 %. 'Organschaften' are hence less significant from a simple volume point of view. If by comparison, however, one considers the proportion of turnover of 'Organschaften' as against turnover as a whole, as in the figure below, it becomes clear that 'Organschaften' are more significant than was previously apparent.



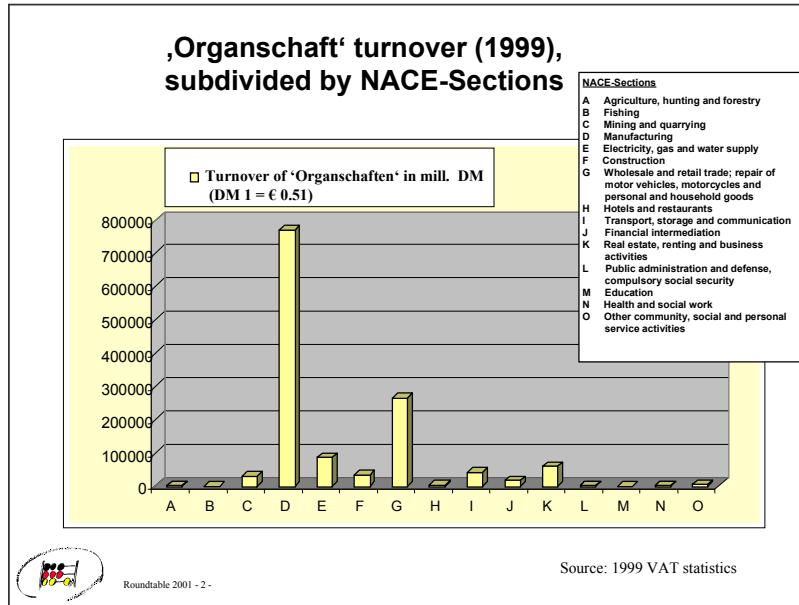
The VAT statistics also provide information on the size of the turnover of the individual 'Organschaften'.

VAT statistics: 'Organschaften' 1999 by size classes of turnover						
Size classes of turnover from ... to less than DM ...	Total		'Organschaften'		Proportion of 'Organschaften' within a size class	
	Tax- payers	Turnover	Tax- payers	Turnover	Quantity	Turnover
	Quantity	DM 1 000	Quantity	DM 1 000		
32 500 - 50 000	265 095	10 862 417	91	3 795	0.0%	0.0%
50 000 - 100 000	524 610	38 199 517	177	13 036	0.0%	0.0%
100 000 - 250 000	741 901	121 081 163	367	60 917	0.0%	0.1%
250 000 - 500 000	474 088	168 320 844	506	188 304	0.1%	0.1%
500 000 - 1 million	350 077	247 390 248	959	725 694	0.3%	0.3%
1 million - 2 million	232 708	327 073 096	1 711	2 500 472	0.7%	0.8%
2 million - 5 million	169 213	520 935 199	2 591	8 459 099	1.5%	1.6%
5 million - 10 million	60 672	422 090 581	1 575	11 169 548	2.6%	2.6%
10 million - 25 million	39 923	614 230 673	1 637	25 794 089	4.1%	4.2%
25 million - 50 million	13 756	478 442 226	729	25 849 187	5.3%	5.4%
50 million - 100 million	7 166	494 706 589	432	30 752 971	6.0%	6.2%
100 million - 250 million	4 268	649 009 657	411	65 326 812	9.6%	10.1%
250 million - 500 million	1 456	507 962 795	210	73 753 195	14.4%	14.5%
500 million - 1 billion	722	501 403 548	133	94 324 551	18.4%	18.8%
1 billion and more	613	2 520 771 340	185	980 460 011	30.2%	38.9%
Total	2 886 268	7 622 479 892	11 714	1 319 381 681	0.4%	17.3%

In comparison to taxpayers as a whole, 'Organschaften' are more likely to be members of size classes with a larger turnover. In the highest size class (with a turnover of more than DM 1 billion) almost one-third of taxpayers are 'Organschaften'. 'Organschaften' however do not necessarily have to be large companies, indeed they are represented in all size classes. There are certainly also 'Organschaften' with very small turnovers.

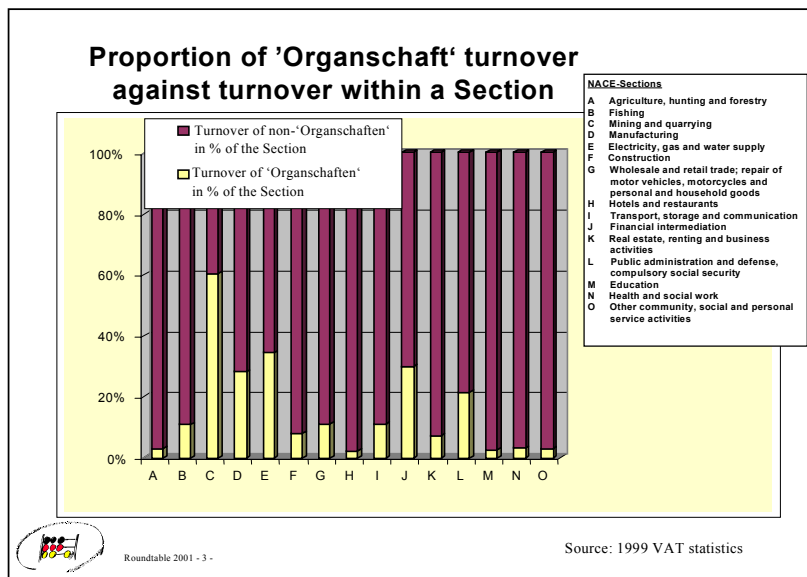
Since the VAT statistics include the economic branch of the taxpayers as a characteristic, it is also possible to make statements regarding the assignment of 'Organschaften' to economic branches. As with all taxpayers, 'Organschaften' are assigned to an economic branch. This assignment is however not carried out in line with the focus of the economic activity of the entire 'Organschaft', but by using the activity of the parent company.³ The results are to be evaluated with corresponding care. The following figure shows the sub-division of the turnover of 'Organschaften' among the sections of NACE Rev. 1.

³ In exceptional cases, tax statisticians reassign the economic branch transmitted by the tax authorities into one standing for the activity of the 'Organschaft' as a whole.

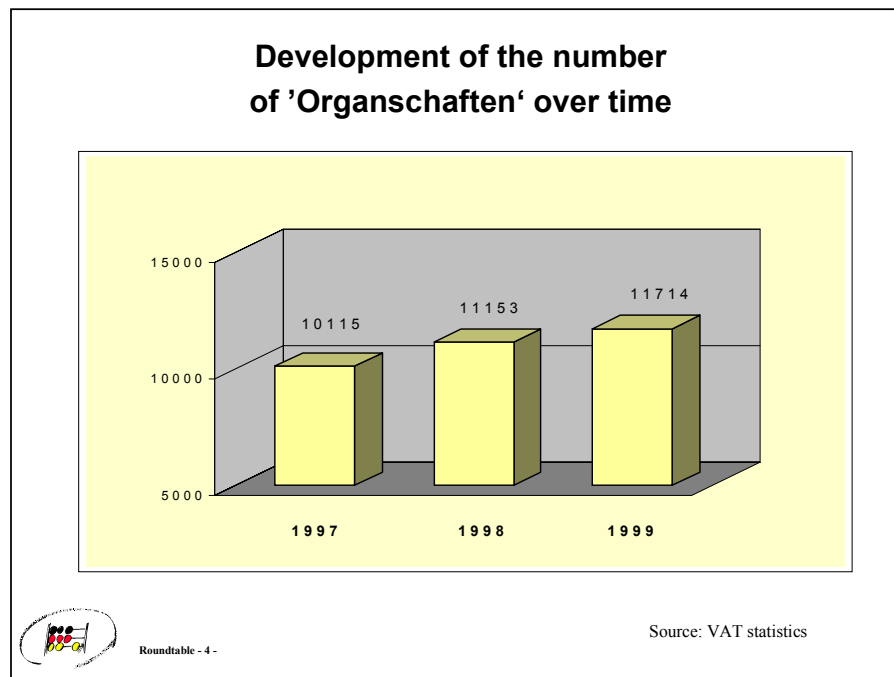


The turnover of 'Organschaften' is thus clearly concentrated in manufacturing. Relatively high turnover can also be recognised in electricity, gas and water supply, as well as in the service sector (Sections I and K).

However, it is more interesting to consider the relative significance of the turnover of the 'Organschaften' in the various economic sectors. The next figure provides information on the proportion of the corresponding turnover of 'Organschaften' in comparison with the overall turnover of an economic sector. Here, particular attention should be attached to Section C 'Mining and quarrying', the vast majority of the total turnover of which is shown as turnover of 'Organschaften'.



The following figure shows the trend in the numbers of 'Organschaften' over time.



It becomes clear that the legal institution constituted by the 'Organschaft' is gaining in significance from a purely volume point of view. From 1997 to 1998, a growth rate of 'Organschaften' of roughly 10% was seen, with a growth rate among overall taxpayers of 2.2% in the VAT statistics. From 1998 to 1999, the growth rate was still as high as 5%, with a growth rate among taxpayers totalling 1%. Furthermore, initial results of a questionnaire started in 2000 of units of the Business Register led to the conclusion that in the data provided by the tax authorities, 'Organschaften' do not always appear to be labelled as such, and that therefore the significance of the 'Organschaft' subject to VAT may be even greater than has been shown here.

3. Difficulties in using administrative data in the case of 'Organschaften'

The tax authorities' VAT files are provided annually to the German Statistical Offices (Federal Statistical Office and Statistical Offices of the Länder). This currently takes place for the purposes both of VAT statistics and of the Business Register.

In the case of 'Organschaften' subject to VAT, the financial authorities provide a data set containing the turnover of the 'Organschaft' and the name, address and economic branch of the parent company. Information on controlled subsidiary companies belonging to a 'Organschaft' is not provided. The taxable turnover of the controlled subsidiary companies is shown with the related parent company. Furthermore, only the external turnover of an 'Organschaft' is taxable, and not the internal turnover carried out between the controlled subsidiary companies and the parent company.

This leads to the following difficulties as regards processing the VAT files in the Business Register:

- (1) The register contains absolutely no information on enterprises (legal units) if these are parts of 'Organschaften' ('Organgesellschaften') which are not contained in any other register information source.
- (2) Controlled subsidiary companies ('Organgesellschaften') included in the register from other sources than the VAT files are shown without taxable turnover.
- (3) The parent companies ('Organträger') are shown in the register with the taxable turnover of the whole 'Organschaft', and not with their own turnover, which is the more alarming if parent companies are not labelled as such in the VAT files.

- (4) The turnover of the 'Organschaft' is shown globally in the economic branch of the parent company, which leads to more serious consequences the more heterogeneous the nature of the activities of the members of the 'Organschaft' (parent company and controlled subsidiary companies).
- (5) The whole turnover of the 'Organschaft' is assigned on a regional basis to the headquarters of the parent company, although this need not be the location in which the principle economic activity takes place, and furthermore does not need to be the only place of the economic activity combined in the 'Organschaft'.

On the whole, the use of the VAT files in the case of 'Organschaften' subject to VAT therefore leads to a loss of factual and regional depth in the content of the register. This also impacts the various possible uses of the register. Thus, register evaluations are only meaningful to a certain degree if, for instance, the controlled subsidiary companies are missing in the number of enterprises, or turnover is perhaps shown in an economic branch or region in which it was not made.

Also in register-based surveys, the inaccuracies in the register caused by the presence of 'Organschaften' subject to VAT must be born in mind and accepted to the greatest possible degree. Thus, the Business Register for example serves as the basis for selection and the framework of extrapolation for the statistical survey in the service sector taken for the first time in 2001. In particular, this survey uses the units and information on the economic branch, and on the turnover originating from the VAT files processed in the register. Because the controlled subsidiary companies might possibly be missing, it was therefore necessary to accept that service enterprises may be missing both in the basic total and in the sample, and hence that total values may be underestimated. Conversely, there is a danger that by virtue of the complete assignment of 'Organschaft' turnover to the service area using the economic branch label of the parent company, the significance of this economic branch is overestimated. In order to minimise distortions, it was necessary in taking the samples to create special layers for units labelled as parent companies if the only layer variable available was the turnover. With all these preconditions, it will presumably be difficult to provide high-quality service statistics.

4. A case example

We would like to present a case example in order to permit a better understanding of the role played by 'Organschaften' in statistics. This case example is intended on the one hand to depict the difficulties encountered in using administrative data, whilst at the same time showing that our knowledge of 'Organschaften' is far from being complete. An internationally known company was selected, namely Daimler-Chrysler.

Daimler-Chrysler came into being as an enterprise (legal unit) in November 1998 following the merger of the German Daimler-Benz AG and the US Chrysler Cooperation. Together with its many subsidiary companies, Daimler-Chrysler AG is a group with worldwide activities.

The group

Daimler-Chrysler stated in its 2000 business report that the group includes a total of more than 700 subsidiary companies at home and abroad. Added to these is a joint venture and shareholdings in associates. The group of consolidated companies in the group balance sheet does not include all subsidiaries and holdings, but roughly 500 subsidiaries, a joint venture (included on a quota basis) and about 100 associates (measured at equity).

Activity areas

The economic activities of the Daimler-Chrysler Group are by no means limited to automobile manufacture, although the focus on the auto business is named as a strategic orientation for the future. However, the strategy of the past years (at least of the German Daimler-Benz AG) included the establishment of a broad technology group, which is still reflected in various activity areas. The group itself names the following business areas:

Mercedes-Benz Passenger Cars, smart®

Chrysler Group

Commercial Vehicles

Services

Aerospace

Others: These include activities in the areas of rail systems, automotive electronics, ship engines, rail vehicles and decentralised energy systems.

The main business areas are primarily the two first named and - to a considerably lesser degree - the Commercial Vehicles business area.

National view

Only the elements of the group which have their headquarters in Germany are however of primary interest for the German Business Register and for business statistics in Germany. It is hence possible to exclude from the calculation the group's subsidiary companies and shareholdings abroad. The publicly accessible Hoppenstedt group structure database states for 1999 that the Daimler-Chrysler Group includes 436 German enterprises (legally independent units) of which a majority holding exists in 178 cases and a minority holding in 258 of cases.

'Organschaft'

German statistics do not know the complete 'Organschaft' of Daimler-Chrysler AG from administrative sources. The only thing that is known is that an 'Organschaft' exists (category as assigned by the tax authorities) in which Daimler-Chrysler AG acts as parent company; the individual controlled subsidiary companies are not included in the data of the tax administration, since they themselves are not treated as taxpayers for the purposes of VAT.

The enterprise has however kindly communicated to us the composition of the 'Organschaft' subject to VAT (as on May 1st 2000) so that we are able to report on this. The 'Organschaft' consists of a total of 168 legally independent units: 1 parent company and 167 controlled subsidiary companies. The parent company and the controlled subsidiary companies can be allocated to all the abovementioned business areas. The best known among them are:

<i>Business area</i>	<i>Legally independent units</i>
Passenger Cars:	Daimler-Chrysler AG, Micro Compact Car smart GmbH
Commercial Vehicles	Evo Bus GmbH, Mercedes-Benz Lenkungen GmbH
Services	debis AG
Aerospace	Deutsche Aerospace GmbH (DASA), Dornier GmbH
Others	MTU Motoren- und Turbinen-Union Friedrichshafen GmbH, TEMIC Telefunken microelektronik GmbH, Intertraffic, Daimler-Chrysler Railsystems GmbH

The vast majority of the controlled subsidiary companies (163) are private limited companies (GmbH, limited liability company), and four are public limited companies (AG, stock corporation), as is the parent company itself. The companies are broadly spread across Germany. Judging from the headquarters of the companies, they are present in 14 out of 16 Federal Länder, focusing on Baden-Württemberg (67) and Bavaria (32). If one were to take the local units as a measure, the 'Organschaft' is very probably present in all Federal Länder.

Daimler-Chrysler is certainly an extreme example of the size and variety of an 'Organschaft' and of the concomitant problems in the statistics. However, it is at the same time also an ideal example of the instability or volatility of a 'Organschaft'. The abovementioned strategy of focusing on the core business is reflected in the composition of the 'Organschaft' in that important large enterprises left the 'Organschaft' in 2000 and 2001 when the group gave up its majority holding in those enterprises. Thus, one of the largest service enterprises in Germany, debis AG, left the 'Organschaft' in 2000 (shortly after the date of the list described above). Also Airbus Produktion (previously DASA) is no longer an element of the 'Organschaft' since Daimler-Chrysler now only holds a minority share in the newly-founded EADS. Another well-known example is the sale of the rail systems manufacturer Adtranz, which also used to be a member of the 'Organschaft'.

The impact of this on the usability of the annual turnover communication of the taxpayer Daimler-Chrysler is evident. This can be made clear once more using the example of the abovementioned service statistics carried out for the first time in 2001:

The Business Register is used in selecting random samples and subsequent extrapolation. In particular, the units and information on the economic branch and the turnover of the tax administration are used. Without manual intervention, this would mean that one of the largest German service providers (Debit AG) would be missing, both in the basic total and in the sample. Conversely, the sample and the basis for extrapolation contains parent companies as representatives of the 'Organschaften', most of the turnover of which can certainly not be assigned to the service sector.

5. Seeking a solution

The difficulties encountered in using administrative information in the case of 'Organschaften' subject to VAT were first shown in the third section and then clarified in the case example. Our aim is to keep all elements of the 'Organschaft', i.e. the parent companies and the controlled subsidiary companies, in the Business Register as separate enterprises (in accordance with the current German definition of enterprise) and with the characteristics which are required for surveys and evaluations.

The starting position here is as follows: the two main administrative sources of the Business Register in Germany are the file of enterprises subject to VAT, and a file of the Federal Institute for Employment including all local units with employees subject to social insurance. For a specific 'Organschaft', we therefore receive a dataset containing the turnover of the 'Organschaft' and the name, address and economic branch of the parent company. With regard to this 'Organschaft', we are also given the name, address and economic branch of all local units with employees subject to social insurance, with the number of employees of the individual local units. Information on the enterprise (legal unit) to which the local units belong in each case and whether the local units concerned are the enterprise itself are however not transmitted.

It can hence be stated that all controlled subsidiary companies of a 'Organschaft' with employees subject to social insurance in one or several local units must be contained in the Business Register; classification as a controlled subsidiary company and the relation to the parent company is however missing. The main problem which needs to be solved lies in obtaining this additional information (identification). An additional problem then lies in obtaining the missing characteristics of the controlled subsidiary companies and the parent company in particular turnover (characteristics).

Identification

(1) Register survey

German statistics currently use the so-called register survey in order to solve the problem of identification as a 'Organschaft'. Included in the survey in particular are all units contained in the data file of the Federal Institute for Employment, but which could be allocated neither to a unit from the VAT files nor to a unit labelled in the register as a local unit. This is based on the expectation that these units are either

- local units of enterprises not previously assigned to this enterprise,
- duplicate entries in the shape of units for which the address comparison between the file of the Federal Institute for Employment and the register was unsuccessful, or
- controlled subsidiary companies ('Organgesellschaften').

The survey form of the register survey explicitly includes the question of whether the enterprise is a controlled subsidiary company and if so, who is the corresponding parent company ('Organträger'). Now (June 2001) it has already been possible to identify more than 20,000 controlled subsidiary companies by these means. Precise details of the total number of controlled subsidiary companies cannot however be given at present.

(2) Additional administrative information

A further possible solution is based on using additional administrative information to complete and update the identification of 'Organschaften'. The German tax authorities should be aware of the controlled subsidiary companies from which a 'Organschaft' is formed. The goal is hence to obtain this information from the fiscal administrations and to process it in the Business Register. Since the German fiscal administration is not centralised, the so-called 'Organschaft' files are kept in the Länder tax authorities - in different forms. In addition, a Federal authority (the Federal Finance Office) keeps a 'Organschaft' file containing information on parent companies and controlled subsidiary companies; however, only those parent companies and controlled subsidiary companies are included which have applied for a turnover registration No. for intra-Community trade. There is still no statutory basis for the use of these files for official statistics. However, an appropriate draft Bill is under preparation.

(3) Unique number for economic units in the administrations

The German Federal Government is currently making efforts to introduce a unique, clear nomenclature for economic units. There is as yet no comprehensive concept for this. In a two-year trial phase, rules are to be developed and tried for issuing and for continuity. The statistics authorities have proposed to relate the nomenclature to legal units as well as to local units in order to document the connection.

Should this be possible, all controlled subsidiary companies and the parent company of a 'Organschaft' would be given a separate label. With those units which we obtain from the Federal Institute for Employment, it would be noted whether these are themselves a legal unit or a branch of a legal unit, the number of which should also be stated. With this procedure, the problem of identification, that is, the identification of a unit as a legal unit, would already be solved. However, this is not a solution to the question of the categorisation of a legal unit as a controlled subsidiary company and the relationship with the parent company.

Characteristics

The above approaches primarily contribute towards identifying the controlled subsidiary companies as legal units or enterprises respectively. In order to implement surveys with the aid of the Business Register, however, the required characteristics are those on which the duties to report are based and which are indeed prescribed in the regulation on registers: The economic branch, annual turnover and the number of employees.

Providing the number of employees and the economic branch does not cause problems if it has been possible to identify the controlled subsidiary company using a register survey with units from the material provided by the Federal Institute for Employment, since this material contains both characteristics.

The greatest problems are caused by obtaining the turnover characteristic for parent companies and controlled subsidiary companies. The German VAT administrations only know the turnover of the whole 'Organschaft', which is also defined as external turnover, and which does not include turnover within the 'Organschaft'. In order to obtain at least a rough estimation of the turnover of the parent company with the controlled subsidiary companies, a proposal is being discussed to form an initial estimate of this turnover with the aid of the number of employees of the individual members of the 'Organschaft' and the turnover of the 'Organschaft' (sub-division). More differentiated models for an appropriate sub-division of turnover are also being considered. In the medium to long term, a further possibility under consideration is that of obtaining from the tax authorities approximate figures for the turnover of the largest parent companies and controlled subsidiary companies. In some cases, the Länder tax authorities obtain such approximate figures every few years in order to be able to classify enterprises according to size, and from this to draw specific fiscal conclusions (e.g. the need for a tax audit).

Administrative units

The URS 95 register system currently in use in German statistics distinguishes between various types of units (e.g. enterprises with one local unit, enterprises with several local units, local units within enterprises with several local units, etc.). These units are all delimited and maintained from a purely

statistical point of view in order to treat them as survey units and/or portrayal units. 'Organschaften' are a good example of the fact that this is not always successful.

The administrative data on 'Organschaften' are however at the same time so important as to be indispensable to statistics. The result of this is the need in future to store this information in the Business Register, not as statistical units, but as a separate type of unit: an administrative unit. This opens up the possibility to have available all information from the individual administrations on all units in the register without automatically needing to form statistical units from this. How, and in particular using which information, statistical units will be formed in future can hence be treated as a separate task, which is touched upon briefly below.

Enterprise groups and complex enterprises

As was described at the outset, 'Organschaften' can be described as groups of legal units linked to one another. Because of this label, it makes sense to ask questions concerning the relationship between 'Organschaften', enterprise groups and complex enterprises, existing out of more than one legal unit. The criteria formulated by the tax administration for a 'Organschaft' (financial, economic and organisational integration) can also be found in the definitions and explanations on both statistical units 'enterprise groups' and 'complex enterprises'. Furthermore, in the case example of Daimler-Chrysler, the relationship between groups of companies (enterprise groups) and 'Organschaften' was listed.

The Federal Statistical Office has not yet examined this question in detail. There are, however, plans for a project which would use 'Organschaften' as an approach to record the characteristic 'control' in the Business Register, and hence as a starting point for the formation of enterprise groups in the Business Register. Furthermore, the question of the relationship between 'Organschaften' and complex enterprises within the meaning of the Regulation on statistical units and of Chapter 19 of Eurostat's Manual 'Business registers for statistical purposes - Methodological recommendations' is being discussed. As the first and not the final answer, it can be determined that a very large number of smaller 'Organschaften' (with a small number of legal units) can presumably also be regarded as complex enterprises. These cases are frequently referred to as so-called 'company splittings' ('Betriebsaufspaltung'), meaning an enterprise which has divided into two or more legal units, e.g. into an owning company and an operational or production company.

Even if such agreements are not the rule, it is however possible not merely to recognise the opportunity to regard the fiscal phenomenon of 'Organschaften' as a statistical accident, but indeed to benefit from it.

6. Conclusion

Not lastly as a result of the increasing use of the Business Register for surveys and evaluations and concomitant considerations for greater use of administrative data for statistical purposes, statistics must be concerned with the special administrative regulations. A 'Organschaft' subject to VAT offers for German statistics, and in particular for the Business Register, a specific difficulty for which there are various suggested solutions, some of which are already being applied. The register survey that is presently under way contains, for instance, a question relating to 'Organschaft' relationships. Official German statistics are also attempting to obtain further vital information from administrative bodies; either specifically relating to 'Organschaften' or in the shape of a unique economic number on all legal units.

It is however also necessary to ensure that all important additional information can be efficiently stored and processed, for instance by having the Business Register distinguish clearly between administrative, legal and statistical units. This is true in particular for the formation of specific statistical units, such as the enterprise group, where appropriate 'Organschaften' can be used as a point of reference.